

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Rafael A. Sierra et al.

Serial No.: 09/924,156

Filed: August 7, 2001

Title: METHOD FOR TREATING ACNE

Examiner:

Art Unit: 3739

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OFFICE OF PETITIONS

Assistant Commissioner for Patents
Box Missing Parts
Washington, D.C. 20231

Dear Sir:

**PETITION TO BEGIN PROSECUTION UNDER 37 CFR 1.47(a)
WITHOUT THE SIGNATURE OF INVENTOR KATHLEEN MCMILLAN**

Applicants hereby respectfully petition the Commissioner under 37 CFR 1.47(a) to begin prosecution of the above-referenced patent application without the declaration signature of inventor Kathleen McMillan. In support of the present petition, applicants are filing herewith in response to the Notice to File Missing Parts

1. the declaration of the available inventors on behalf of themselves and on behalf of the nonsigning inventor,
2. the Declaration of Rafael A. Sierra which provides the required factual proof that Ms. McMillan was provided a copy of the application and declaration for signature and that she has refused to execute the declaration and

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3. the last known address of Kathleen McMillan which is 1958 Main Street, Concord, MA 01742.

Pursuant to 35 USC 116, if a joint inventor refuses to join in an application for patent, the application may be made by the other inventor on behalf of himself and the omitted inventor. The Director, on proof of the pertinent facts and after such notice to the omitted inventor as he prescribes, may grant a patent to the inventor making the application, subject to the same rights which the omitted inventor would have had if he had been joined.

Pursuant to 37 CFR 1.47, if a joint inventor refuses to join in an application for patent, the application may be made by the other inventor on behalf of himself or herself and the nonsigning inventor. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, the fee set forth in section 1.17(h), and the last known address of the nonsigning inventor. Pursuant to MPEP 409.03(a), an oath or declaration signed by all the available joint inventors with the signature block of the nonsigning inventor(s) left blank may be treated as having been signed by all the available joint inventors on behalf of the nonsigning inventor(s) pursuant to 37 CFR 1.64.

The Declaration of Rafael A. Sierra states that on November 30, 2001, a copy of the application, assignment to the New England Medical Center Hospitals, Inc. and inventor declaration was sent by first class mail to the home of Kathleen I. McMillan at 1958 Main Street, Concord, MA 01742. On March 7, 2002, Rafael A. Sierra called Kathleen McMillan at her place of employment Candela Corporation, 530 Boston Post Road, Wayland, MA 01778. Rafael A. Sierra confirmed that Kathleen McMillan received the application and the inventor declaration and Rafael A. Sierra asked that Kathleen McMillan execute the inventor declaration. Kathleen McMillan told Rafael A. Sierra that she would not execute the inventor declaration. Kathleen

McMillan stated as the basis for her refusal to sign that she thought the application would not be in the best interests of her present employer.

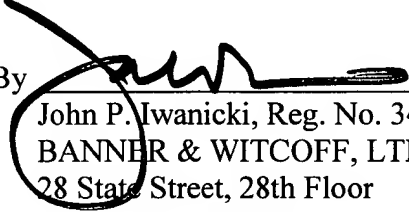
Applicants respectfully submit that they have met the requirements of 37 CFR 1.47(a) to begin prosecution on the merits without the declaration signature of Kathleen McMillan. Applicants, therefore, respectfully request that the Commissioner grant the present petition.

The Commissioner is hereby authorized to charge the petition fee of \$130.00 pursuant to 37 CFR 1.17(h) to Deposit Account No. 19-0733.

Respectfully submitted,

Dated: April 12, 2002

By


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